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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1485

WILLIAM ENGLISH, JR., *Petitioner*,

v.

HON. ALEXANDER A. LAWRENCE, Chief Judge, United States District Court for the Southern District of Georgia; SEABOARD COAST LINE RAILROAD COMPANY; and BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, *Respondents*.

BRIEF OF RESPONDENT BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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OPINION BELOW

The order and decision of the United States Court of Appeals for the Fifth Circuit was entered on February 27, 1975, and is reproduced at page 1a of the Appendix to the petition.

QUESTION PRESENTED

In the opinion of respondent Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes (BRAC), the respondent Seaboard Coast Line Railroad Company (SCL) has correctly stated the question presented by the petition at page 2 of its brief in opposition.

STATUTORY PROVISION INVOLVED

Respondent BRAC agrees with the statement of the SCL at page 2 of its brief in opposition that the All Writs Act (28 U.S.C., Section 1651(a)), quoted at page 3 of the petition, is the only relevant statute involved.

STATEMENT

The brief in opposition of the respondent SCL (pages 2-6) has correctly set forth the factual circumstances under which the Court of Appeals denied the petition of William English, Jr., to issue a writ of mandamus to the District Court and the appendix to such brief contains the documents relating to those circumstances.

The complaint in the District Court, insofar as it involves BRAC, is directed at two matters. These are (1) that BRAC and Local Lodges thereof in Savannah, Georgia (Locals Nos. 5 and 1586), maintain racially segregated Locals, and (2) that BRAC is a party to collective bargaining agreements with the respondent SCL containing provisions tending to perpetuate the effects of alleged discriminatory acts and practices of the carrier. The complaint asks for declaratory and injunctive relief, the award of back pay, and the award of costs and reasonable attorneys' fees. The record shows that the petitioner and the class of black em-

ployees of the SCL which he represents has obtained complete relief with respect to these matters.

The record shows that the claim with respect to segregated Local Lodges was mooted before the case came to trial on the merits. BRAC, as a part of a program to eliminate all Local Lodges containing members of a particular race, moved to bring about the consolidation of Locals Nos. 5 and 1586. Petitioner opposed the consolidation unless certain conditions were attached thereto and obtained a restraining order from the District Court against the consolidation pending a hearing on the issue of such conditions. Following such a hearing the District Court entered an order providing for the consolidation of the two Lodges upon terms and conditions which the Court found to be appropriate.[1] Thereafter, the two Lodges were consolidated as BRAC Local No. 324, which has been and presently functions as a single integrated Lodge. Indeed, the testimony of petitioner before the District Court showed that at such time he held a position on the Grievance Committee of the consolidated Lodge.[2]

The seniority provisions of the agreement between BRAC and the carrier, about which petitioner complains, were the classification of jobs into groupings designated as Group I and Group II. It was the claim of petitioner that these groupings hindered the promotion of black employees. These seniority provisions were not unique to the SCL but at the time of the effective date of Title VII of the Civil Rights Act of 1964

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[1] Page 30a of Appendix to brief in opposition of respondent SCL.

[2] The statement at page 4 of the petition implying that the Lodges were consolidated only on the order of the District Court is incorrect.

had been in existence in the railroad industry for almost 50 years. The record shows that the classification of jobs in the craft or class of railroad employees represented by BRAC into such groupings was established by the Federal government through directives of the United States Director General of Railroads during United States operation of the railroads in World War I. At the time that Title VII became effective, BRAC was a party to approximately 350 agreements in the railroad industry in which jobs were so grouped and classified. BRAC had a policy long prior to the enactment of Title VII of seeking to eliminate provisions from collective bargaining agreements that might be racially discriminatory. Indeed, this policy resulted in BRAC being one of the few, if not the only union, to be sued by its white members. *Pellicer* v. *Brotherhood of Railway and Steamship Clerks,* 118 F.Supp. 254 (D. C. Fla., 1953), aff'd 217 F.2d 205 (5th Cir., 1953), *cert. den.* 349 U.S. 912. It was not until the late 1960's that questions were raised with respect to this job classification system.[3] BRAC thereafter undertook a program of consolidating all job classification groupings in all of its railroad agreements. These changes were required to be processed under the Railway Labor Act (45 U.S.C., Sections 151, et seq.) and these procedures have continued until all such groupings with minor exceptions have been eliminated. In the case of the SCL, the process was completed on or about January 13, 1973. In the trial of this case in the District Court, counsel for

[3] The record also shows that the charges of petitioner to the Federal Equal Employment Opportunity Commission did not attack the job classification groupings, that such charges were not served upon BRAC as Title VII then required, and that BRAC was not given any opportunity to participate in conference, conciliation, or persuasion, in direct violation of Title VII.

petitioner conceded that the agreement between BRAC and SCL consolidating seniority rosters eliminated petitioner's complaint with respect to promotion of black employees. The change was not limited to the class represented by petitioner in the *English case,* but its effect was system-wide with respect to all black employees of the SCL. By agreement of the parties, the District Court on November 16, 1973, enjoined any revisions of this agreement without Court approval. Thus, the second portion of the complaint against BRAC was also mooted.

The only other relief which petitioner might obtain would be back pay and attorneys' fees.[4]

ARGUMENT

There Are No Special Circumstances and Important Reasons for the Grant of the Writ in This Case

The burden ordinarily resting upon a petitioner to demonstrate that there are special and important reasons for the grant of a writ of certiorari is substantially greater in this case because of the extraordinary nature of the mandamus writ, its limited purposes, and the sparingly exercised discretion resting in Federal Courts to issue such writs. In *Will* v. *United States,* 389 U.S. 90, at pages 95 and 96, this Court, in vacating a writ of mandamus issued by a Court of Appeals, emphasized that "it is clear that only exceptional circumstances amounting to a judicial 'usurpation of power' will justify the invocation of this extraordinary remedy." This Court further pointed out that "the party seeking mandamus has 'the burden of showing that its

[4] At the request of petitioner, the case below was bifurcated into a hearing on the liability issue and, subsequently, a hearing on the compensation issue, if required.

right to issuance is "clear and indisputable" '." In an effort to meet the heavy burden which rests upon him, the petitioner contends that the Court of Appeals in denying the application for a writ of mandamus to the District Court has so far sanctioned a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision (Pet., 11-15). It is respectfully submitted that this contention is wholly without merit.

The petition argues (page 14) that unless this Court exercises its power of supervision, petitioner and the members of his class will simply be deprived of an adjudication of their claims under the Civil Rights Act. This assertion represents a gross misstatement of fact. The primary emphasis in Title VII of the Civil Rights Act is on the elimination of discriminatory employment practices. The record before the Court of Appeals on the petition for a writ of mandamus clearly showed that the alleged discriminatory practices set forth in the complaint had been eliminated through voluntary action of the respondents prior to the submission of the liability phase of the case to the District Court, that these actions had been approved by the District Court, and that any future effort to reinstate the alleged practices had, with the consent of respondents, been permanently enjoined. Thus, BRAC had, more than a year prior to the trial of the liability phase of the case, moved to consolidate the Local Lodges and such effort resulted in the District Court's order of January 28, 1972, effectuating the consolidation (SCL Br., 30a-32a), and BRAC and SCL by agreement dated January 12, 1973, eliminated all references to Groups I and II in the collective bargaining agreement and consolidated the seniority rosters for these classifications over the entire

SCL system. The District Court approved this agreement and permanently enjoined any employment practice or course of conduct inconsistent therewith (SCL Br., 48a-51a). The consolidation of the seniority rosters not only eliminated the basic claim of the petitioner and the class he represents, but applied to all black employees of the SCL represented by BRAC.

The only other relief which the petitioner might obtain following the entry of Findings of Fact and Conclusions of Law, sought by the writ of mandamus, would be consideration of claims for back pay and attorneys' fees. The presence of such claims does not give rise to a situation calling for the extraordinary relief of mandamus. Petitioner's wage claims are entirely for a past period and to the extent that they may subsequently be granted by the District Court, the passage of time would be covered by interest with respect thereto. It has long been recognized that purely monetary claims do not constitute irreparable injury calling for the grant of the extraordinary remedies of injunction or mandamus. *Whitehouse* v. *Illinois Central Railroad Co.*, 349 U.S. 366 (1954); *Schlosser* v. *Commonwealth Edison Co.*, 250 F.2d 478 (7th Cir., 1958), *cert. den.* 357 U.S. 906.

The petition also argues (pages 12-13) that this case assumes added importance when viewed in the context of the alleged refusal of the District Court to decide similar employment discrimination cases for extended periods of time. The respondent SCL in its brief in opposition (pages 6-9) has clearly demonstrated the inaccurate and unfair nature of this attack upon the District Court. BRAC fully concurs in the SCL analysis of the petitioner's argument and the complete lack of merit whatsoever in that argument.

CONCLUSION

BRAC respectfully submits that the petition should be denied.

Respectfully submitted,

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